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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
**FEDERAL COMMUNICATIONS COMMISSION**
Washington, D.C. 20554

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| In the Matter of | ) | |
| | ) | EX PARTE OR LATE FILED |
| Eligibility for the Specialized Mobile Radio Services and Radio Services in the 220-222 MHz Land Mobile Band and Use of Radio Dispatch Communications | ) | GN Docket No. 94-90 |

DOCKET FILE COPY ORIGINAL

To: The Commission

**MOTION FOR ACCEPTANCE OF THE AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.'S REPLY COMMENTS**

The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), pursuant to Section 1.415(d) of the Federal Communications ("FCC" or "Commission") Rules and Regulations, respectfully requests the Commission to accept its Reply Comments in the above-entitled proceeding. Interested parties were required to file reply comments in this proceeding on or before October 20, 1994. However, due to unanticipated administrative delays, AMTA was unable to file its reply comments by that date.

AMTA is a nationwide, non profit trade association dedicated to the interests of what heretofore had been classified as the private carrier industry. AMTA submits that the Commission should accept its comments because they address important aspects regarding the subjects raised in the instant proposal.

Since there are no further opportunities for the parties to make comments in this proceeding, the minimal one-day delay of this late filing will not prejudice any of the parties.

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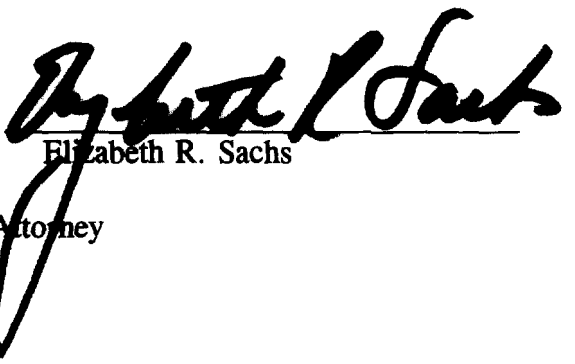
Accordingly, AMTA respectfully urges the Commission to accept for full consideration its Reply Comments.

Respectfully submitted,

**AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.**

By: 
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Its Attorney

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## CERTIFICATE OF SERVICE

I, Katherine A. Baer, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify that I have, on this 21st day of October, 1994, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing, Motion for Acceptance of the American Mobile Telecommunications Association, Inc.'s Reply Comments to the following:

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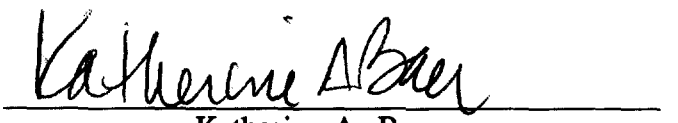

Katherine A. Baer

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| Mobile Band and Use of Radio | ) | |
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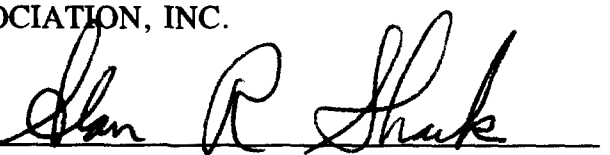
To: The Commission

**REPLY COMMENTS OF THE**
**AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.**

Respectfully submitted,

AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.

By: 

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October 21, 1994

Before the
**FEDERAL COMMUNICATIONS COMMISSION**
Washington, D.C. 20554

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To: The Commission

**REPLY COMMENTS OF THE**
**AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.**

The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), pursuant to Section 1.415 of the Federal Communications ("FCC" or "Commission") Rules and Regulations, respectfully submits its Reply Comments is the above-entitled proceeding. The record in this proceeding clearly supports elimination of the prohibition against wireline common carrier ownership of 800 MHz and 900 MHz Specialized Mobile Radio ("SMR") Service systems, but lacks evidence that the public interest would be served by a similar rule change in the embryonic 220 MHz service. The Comments also indicate confusion regarding the scope of the prohibition against common carrier dispatch service. Common carriers, as a class of eligibles, are not prohibited from providing dispatch service: the ban limits only the spectrum on which such service may be offered. Elimination of the SMR wireless prohibition, at least at 800 MHz and 900 MHz, will permit common carriers, both wireline and non-wireline, to enter the dispatch market on spectrum designated for that purpose and on comparable regulatory footing with competition in that marketplace. That opportunity will serve the

public interest, as well as the Congressional and agency goal of promoting regulatory parity.

## I. THE RECORD SUPPORTS ELIMINATION OF THE SMR WIRELINE OWNERSHIP BAN AT 800 MHz AND 900 MHz

Virtually every party in this proceeding supports the Commission's tentative conclusion that repeal of the prohibition against wireline ownership of SMR systems is now appropriate.[1/] Many cite the maturation of this industry, at least in the 800 MHz and 900 MHz bands, as evidence that it can withstand the anti-competitive pressures which can develop in a marketplace populated by both independent and monopoly-based entities.

AMTA too endorsed that position, noting that recent large-scale changes in the type and number of SMR providers in those bands, in conjunction with recent regulatory developments, warrant reconsideration of the level of regulatory protection needed to ensure robust competition. At the same time, however, the Association cautioned the FCC regarding the ongoing need to monitor wireline participation against cross-subsidization and discriminatory interconnection practices. AMTA also recommended a more cautious approach at 220 MHz, a band which is only now emerging from its most embryonic state.

Several parties shared the Association's position. They recognized that wireline entry will infuse additional capital and expertise into an already highly successful, competitive marketplace. Thus, they supported deletion of the ban, but urged the FCC

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[1/] See Comments of SMR Won.

to adopt measures appropriate to protect against anti-competitive activities by monopoly wireline participants.[2/] Assuming necessary prophylactic measures are coupled with elimination of the ban at 800 and 900 MHz, it appears that, on balance, wireline participation will enhance rather than inhibit competition.

No such showing has yet been made for the 220 MHz band. As the Commission itself noted in the recently adopted Third Report and Order, implementing the conversion of interconnected, for-profit private and common carrier land mobile services to Commercial Mobile Radio Service ("CMRS") status:

> While we have identified 220 MHz service as potentially competitive with and therefore substantially similar to other CMRS services for purposes of establishing comparable technical and operational rules, the service is still in its infancy and its competitive potential largely unknown. Based on these findings, we conclude that no change to our 220 MHz rules is required in this proceeding to ensure regulatory symmetry. We also believe that a more comprehensive record is needed before we consider implementing a new licensing scheme based on different sized channel blocks or service areas. We therefore intend to initiate a separate proceeding in the near future to address these issues in the 220 MHz service.[3/]

Although the Commission has determined that interconnected, commercial 220 MHz systems satisfy the CMRS definition, the agency considered the service too new, too unformed, to assess whether it is comparable to, and should therefore be regulatory symmetrical with, existing common carrier or even reclassified private carrier services.

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[2/] See, e.g. Comments of the National Association of Business and Educational Radio, Inc. ("NABER") at 4; Nextel Communications, Inc. ("Nextel") at 5-6; SMR Won at 9-11.

[3/] Third Report and Order in GN Docket No. 93-252, FCC 94-212, ¶ 127 (footnote omitted) (September 23, 1994).

It has not been in operational existence long enough for its competitive status to be evaluated properly. At a minimum, therefore, AMTA urges the FCC to defer any determination regarding the 220 MHz wireline prohibition for inclusion in the broader proceeding in which the FCC has promised to reconsider the very structure of the 220 MHz regulatory environment. Adoption of the instant proposal would constitute piecemeal rule making, an approach not likely to produce a cohesive, comprehensive 220 MHz regulatory structure.

## II. THE PROHIBITION AGAINST PROVIDING DISPATCH SERVICE ON CELLULAR SPECTRUM SHOULD BE RETAINED

By contrast with the relatively unanimous support for permitting wireline ownership of SMR systems, the positions on common carrier dispatch are diverse. For the most part, the heretofore private land mobile industry opposes lifting the ban[4/] while common carrier interests endorse a change.[5/] The latter argue that repeal of that restriction will enable well-qualified, well-financed entities to enter the dispatch marketplace. They claim that this will enhance competition, advance regulatory symmetry and promote the public interest.

AMTA disagrees. The issue is not whether common carriers may compete in the dispatch industry, but on what spectrum they may do so. Non-wireline common carriers,

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[4/] See, e.g. Comments of AMTA at 10-12; E.F. Johnson Company ("EFJ") at 2-4; Geotek Communications, Inc. ("Geotek") at 2-6; NABER at 1-7; Nextel at 7; SMR Won at 18-24.

[5/] See, e.g., Comments of AirTouch Communications ("AirTouch") at 2-5; BellSouth at 15-16; Cellular Telecommunications Industry Association ("CTIA") at 4-7; McCaw Cellular Communications, Inc. ("McCaw") at 1-5; the Nynex Companies ("Nynex") at 8-10; Personal Communications Industry Association ("PCIA") at 1-2; Rural Cellular Association ("RCA") at 3-5; Southwestern Bell Corporation ("SBC") at 7; Spring Corporation at 1-4.

such as McCaw, have been free to operate SMR systems from the inception of the service twenty years ago. Assuming the rules proposed herein are adopted, wireline carriers will also be eligible to secure SMR licenses and provide any combination of dispatch and interconnected service they desire. Further, the FCC rules have always permitted all common carriers to offer 450 MHz dispatch service as private carriers. The restriction has not been on the classification of the party providing the service; it has been on the frequencies on which it may be offered. Thus. their failure to pursue this marketplace has presumably been based on business evaluations, rather than regulatory impediments.[6/] Nothing in the record in this proceeding supports a change in the prohibition as currently crafted.

Those who support elimination of the prohibition argue that technological advances in general, and more limited customer demand for cellular service in rural areas, have created a capacity surplus on cellular spectrum. They assert that the public interest would be served by allowing the excess capacity to be devoted to dispatch communications. AMTA does not disagree. If the very generous cellular spectrum supply is not needed to provide the service for which it was assigned, it would be beneficial for unnecessary frequencies to be made available for other purposes. However, if that is the case, the Association sees no particular reason why the current

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[6/] None of the non-wireline entities who support elimination of the ban explain why they have elected not to secure private land mobile licenses under which they could offer dispatch service. For example, the Rural Cellular Association indicates that rural cellular carriers have been prevented from offering this service when, in fact, those unaffiliated with wireline companies could have provided dispatch on private land mobile frequencies.

cellular licensee should necessarily be awarded the use of that spectrum.[7/] Instead, it should be recovered by the FCC and made available to any qualified applicant under applicable FCC assignment processes, presumably competitive bidding procedures.

The approach recommended by AMTA would be consistent with the FCC's efforts to achieve regulatory symmetry. Cellular operators would continue to provide the service for which their spectrum was allocated. They would also be free to enter the dispatch market using heretofore private land mobile frequencies on which that service was intended to be offered, or, alternatively, they could compete for recovered, excess cellular spectrum which would be awarded to the applicant which valued it most highly. The Congressional directive to promote regulatory parity was not enacted to override the Commission's obligation to make prudent spectrum allocation decision; it was intended to ensure that those providing comparable services were subject to comparable regulatory schemes. This objective would be accomplished by the Association's proposal herein.

## III. CONCLUSION

For the reasons described herein, AMTA recommends that the Commission eliminate the ban on wireline carrier ownership of 800 MHz and 900 MHz SMR systems, that it defer any consideration of this matter at 220 MHz for the more general 220 MHz proceeding, and that the FCC maintain the current ban on the use of common carrier spectrum for the provision of dispatch service.

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[7/] Memorandum Opinion and Order in PP Docket No. 93-253, FCC 94-123 (July 14, 1994) (Chairman Hundt dissenting).

## CERTIFICATE OF SERVICE

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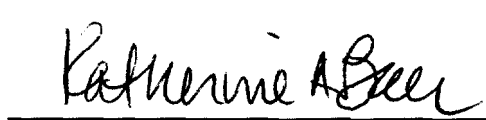

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